

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

JOSEPH R. ERNST)
)
Plaintiff(s),)
)
vs.) NO. 3:11-CV-00624-HEH
)
EXPERIAN INFORMATION)
SOLUTIONS, INC., TRANS)
UNION, LLC, and WACHOVIA)
MORTGAGE, a Division of)
Wells Fargo Bank, N.A.,)
)
Defendant(s).)

ORAL AND VIDEOTAPED DEPOSITION OF
KATHLEEN C. HILL
FEBRUARY 9, 2012

Oral and videotaped deposition of KATHLEEN C. HILL, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 9th day of February, 2012, from 11:16 a.m. to 2:06 p.m., before Ranae McDermott, RMR, CRR, in and for the state of North Carolina, reported by machine shorthand, and at the offices of K & L Gates, 4350 Lassiter at North Hills Avenue, Suite 300, Raleigh, North Carolina, 27609, pursuant to the Federal Rules of Civil Procedure and the provision stated on the record or attached hereto.

11:36 1 Q. Well, taking a look at Exhibit 4, your
11:36 2 report -- and, actually, let me -- what -- what do you
11:36 3 understand Joseph Ernst's dispute to be, my client's
11:36 4 dispute to be?

11:36 5 A. That -- what it came down to was that he did
11:36 6 not sign the power of attorney.

11:37 7 Q. And did he sign the power of attorney?

11:37 8 A. I don't know.

11:37 9 Q. To this day, you don't know whether he signed
11:37 10 the power of attorney?

11:37 11 A. Have -- has any conclusions been made on that?

11:37 12 Q. Well --

11:37 13 MS. FRANK: Len, this is Terry. I mean,
11:37 14 I think what we're willing to stipulate that the power
11:37 15 of attorney was a forgery. I mean, her -- her
11:37 16 investigation, I believe, is the topic of your
11:37 17 investigation, so...

11:37 18 We -- what she has -- what knowledge she
11:37 19 has is not -- hasn't come from her investigation. It
11:37 20 would have been something that counsel told her.

11:37 21 MR. BENNETT: Okay.

11:37 22 Q. (By Mr. Bennett) Well, during your
11:37 23 investigation, were you able to determine or verify that
11:37 24 Joseph Ernst was the person that signed the power of
25 attorney?

11:53 1 Q. Do you understand what that would have been
11:54 2 about?

11:54 3 A. I am not sure. It may be -- I mean, the banks
11:54 4 sent out letters to many people that were behind in
11:54 5 their payments. It may have something to do with that,
11:54 6 but I really don't know.

11:54 7 Q. And then can you read what Mr. Ernst said in
11:54 8 response in summarizing his complaint in responding to
11:54 9 Ms. Ortiz's suggestion of a compromise?

11:54 10 A. Yes. I see that that's above what her -- her
11:54 11 last e-mail.

11:54 12 Q. Um-hum. Can you read what Mr. Ernst said?

11:54 13 A. Um-hum. Hope all is well. That's one of our
11:54 14 core issues. There was never a loan, never received any
11:54 15 monies of any sort. As you know, this was and remains a
11:55 16 part of the identity fraud perpetrated against me. I
11:55 17 will of course read with interest anything I receive.

11:55 18 Q. Now, that is what he was disputing. That was
11:55 19 his complaint, right; that there was never a loan, he
11:55 20 never received any monies of any sort from your bank?

11:55 21 A. Yes.

11:55 22 Q. Now, the next page -- which advancing in time,
11:55 23 page 50 -- there's a discussion -- or there's an e-mail
11:55 24 from Ms. Ortiz, April 21, that says: I would like to
25 speak to you about possibly adding a password on the

01:08 1 paragraph 9, page 2. Can you read paragraph 9?

01:08 2 A. Mr. Ernst denied giving anyone, including his

01:08 3 father, a power of attorney or other similar control

01:08 4 over his personal or business affairs.

01:08 5 Q. And did you in your investigation find any

01:08 6 evidence to refute that denial?

01:08 7 A. I -- I found nothing to refute or to prove it

01:08 8 either way.

01:08 9 Q. Well, you -- you -- you heard the stipulation

01:08 10 that the power of attorney was forged, right?

01:08 11 A. Yes.

01:08 12 Q. Are you aware of -- other than that forged

01:08 13 power of attorney, are you aware of any other basis by

01:09 14 which Wachovia would claim my client gave the father

01:09 15 control over his personal or business affairs?

01:09 16 A. Could you explain that? I...

01:09 17 Q. Sure. There's the power of attorney that's

01:09 18 formed the basis for this loan, right?

01:09 19 A. That's -- that formed the basis of the

01:09 20 signature of Mr. Ernst, Thomas Ernst, on all the

01:09 21 documents in the file.

01:09 22 Q. That's right. There aren't any -- I mean, my

01:09 23 client didn't sign the note or signed the mortgage,

01:09 24 right?

25 A. That's correct.

01:09 1 Q. Those were signed by Thomas Ernst claiming he
01:09 2 had my client's power of attorney, correct?

01:09 3 A. That's correct.

01:09 4 Q. And that power of attorney we all now agree
01:09 5 was a forgery, right?

01:09 6 A. That's correct.

01:09 7 Q. Is there any other -- other than that power of
01:10 8 attorney, is there any other basis that you believe that
01:10 9 Wachovia had to doubt what Mr. Ernst said in paragraph
01:10 10 9, that he did not give his father power of attorney or
01:10 11 other similar control over his personal or business
01:10 12 affairs?

01:10 13 A. I can't say one way or the other. All we had
01:10 14 was mortgage documents in front of us.

01:10 15 Q. Okay. Now, No. 10, Mr. Ernst did not file a
01:10 16 police report related this forgery, correct?

01:10 17 A. As far as I know.

01:10 18 Q. Are you aware of whether or not Wachovia filed
01:10 19 a police report related to this forgery?

01:10 20 A. I know our department did not.

01:10 21 Q. Are you aware of anyone at Wachovia or any
01:10 22 other department that filed a police report related to
01:11 23 this forgery?

01:11 24 A. I am not aware.

25 Q. And at paragraph 12, you say you spoke to --

01:29 1 EXAMINATION

01:29 2 BY MS. FRANK:

01:29 3 Q. Ms.Hill, as you know, I'm Terry Frank, counsel
01:29 4 for Wells Fargo. I just wanted to ask you a couple of
01:29 5 questions about the testimony you just gave.

01:29 6 If you will refer to, I believe it's
01:29 7 Exhibit 12, page 49. We've -- you gave some prior
01:30 8 testimony about that.

01:30 9 A. All right.

01:30 10 Q. Okay. If you will turn to on -- on page 49 --

01:30 11 A. All right.

01:30 12 Q. -- the third bullet point under "Audit
01:30 13 Procedures," starts with "If the complaint is due to
01:30 14 identity theft."

01:30 15 A. Um-hum.

01:30 16 Q. Read -- can you read that first -- just that
01:30 17 first line.

01:30 18 A. If the complaint is due to identity theft,
01:30 19 reverification will be required on employment.

01:30 20 Q. Okay. Reverification of what?

01:30 21 A. That if there was -- if there was something in
01:30 22 the file that verified the employment such as W-2s, pay
01:30 23 stubs or whatever, we would try to reverify the
01:30 24 information and make sure that none of them had been
25 falsified or changed in any way.

01:30 1 Q. And were those documents associated with the
01:31 2 loan closing in the underwriting process?

01:31 3 A. Yes.

01:31 4 Q. Okay. So what are you looking for
01:31 5 specifically?

01:31 6 A. When I'm trying to reverify something or...

01:31 7 Q. Yes.

01:31 8 A. Is if there is anything that would be unusual
01:31 9 about any of the documents in the file.

01:31 10 Q. That were required by...

01:31 11 A. By the original underwriter.

01:31 12 Q. Okay. How is that different, if at all, if
01:31 13 the underwriting process doesn't require any of these
01:31 14 enumerated items?

01:31 15 A. Then we normally would not -- if they didn't
01:31 16 require them to begin with, then there's nothing really
01:31 17 to reverify.

01:31 18 Q. Okay. How much, if any, is your job to review
01:31 19 the underwriting guidelines themselves or the
01:31 20 underwriting process?

01:32 21 A. We don't normally do that because there's so
01:32 22 many different programs and so many different types of
01:32 23 loans that we normally don't get into if the underwriter
01:32 24 wrote to a certain, you know, type of guidelines.

25 That's -- we -- that's -- we -- we assume that the

01:32 1 underwriter did their job to begin with.

01:32 2 Q. And how -- how -- do you know or -- yeah. Do
01:32 3 you know who establishes the underwriting guidelines?

01:32 4 A. The different investors -- Fannie Mae, Freddie
01:32 5 Mac -- whatever investor or whatever bank, you know,
01:32 6 holds the mortgage or that they -- they invest in the --
01:32 7 in the mortgage.

01:32 8 Q. Okay. But is that part of your job
01:32 9 description to...

01:32 10 A. No.

01:33 11 Q. Okay. Okay. If you will turn to Exhibit 4,
01:33 12 please. And, actually, if you could maybe take it out
01:33 13 of the binder, but have Exhibits 1 and 4 in front of you
01:33 14 at the same time. Here.

01:34 15 A. Oh, okay. I lost one somewhere along there.
01:34 16 Okay.

01:34 17 Q. Okay. Speaking of Exhibit 4 -- or referring
01:34 18 to Exhibit 4, it's entitled the "Initial Loan Profile."
01:34 19 What is this document?

01:34 20 A. This was an internal document that is in
01:34 21 our -- was in our old system where we type up our final
01:34 22 findings after we review the loan and do all our
01:34 23 investigation.

01:34 24 Q. Okay. And what's the -- this review date
25 here, what is that on the top right-hand corner?

01:41 1 letters have been sent out.

01:41 2 You testified earlier you -- you didn't

01:41 3 know what for sure that was about.

01:41 4 A. Right.

01:41 5 Q. What, if anything, do you know about the

01:41 6 Pick-A-Pay class action lawsuit?

01:41 7 A. Just that I've heard about it, but nothing

01:41 8 specific.

01:41 9 Q. Do you know if Mr. Ernst was negotiating with

01:41 10 Wells Fargo about settlement under the class action

01:41 11 lawsuit?

01:41 12 A. I don't know that one way or the other.

01:42 13 Q. Okay. Okay. Going back to Exhibit -- Exhibit

01:42 14 4 and Exhibit -- Exhibit 1, you testified just a minute

01:42 15 ago you got this referral and contacted Mr. Ernst

01:42 16 shortly thereafter.

01:42 17 A. Um-hum.

01:42 18 Q. What was your -- what was your first point of

01:42 19 contact with him? Was it an e-mail? Did you call him?

01:42 20 A. I called him.

01:42 21 Q. And what did you -- what did you talk about?

01:42 22 A. We had a long discussion when I -- when I

01:42 23 pulled up some of the information -- after I looked

01:42 24 through the file, I pulled up a lot of information about

25 the -- the title chain to the property and information

01:43 1 about Thomas Ernst, the person that had signed the --
01:43 2 for him as a power of attorney. So I had a lot of
01:43 3 questions for him about who these people were and, you
01:43 4 know, what happened to the title, did he know anything
01:43 5 about that and so forth.

01:43 6 Q. What did -- what was his response about the
01:43 7 step -- let me back up.

01:43 8 What did you find relating -- regarding
01:43 9 the title to the property?

01:43 10 A. I found that shortly after closing that the
01:43 11 title had been transferred to a trust in the name of
01:43 12 Dorothy Valgenti.

01:43 13 Q. Okay. What -- what else did you find, or did
01:43 14 you find anything else?

01:43 15 A. About the property itself?

01:43 16 Q. Um-hum. Um-hum.

01:43 17 A. That's all I can recall.

01:43 18 Q. And what program or what -- what -- what tools
01:43 19 did you use to do a title search?

01:43 20 A. There's a -- we have a program that's called
01:44 21 RealQuest that's a vendor, and it will -- it shows all
01:44 22 the title transfers to a property.

01:44 23 Q. Okay. What other -- what other -- what's --

01:44 24 Backing up from your conversation with
25 Mr. Ernst.

01:44 1 A. Um-hum.

01:44 2 Q. You get this referral, what's the first thing
01:44 3 you do?

01:44 4 A. I take a look at the doc -- the pertinent
01:44 5 documents in the file that are pertinent to his
01:44 6 complaint.

01:44 7 Q. Okay. Did you do that in this case?

01:44 8 A. Yes.

01:44 9 Q. Okay. What -- what else, if anything, do you
01:44 10 do?

01:44 11 A. I pull a new credit report just to see, get an
01:44 12 idea if they bought any other property; what his credit
01:44 13 looks like now. I ran a -- a person check on Mr. Ernst
01:44 14 on the -- the signer of the -- of the person that was on
01:44 15 the power of attorney to the person who owns the
01:44 16 property now. I did a person check, which is kind of
01:44 17 like a background check, on all these people to see if I
01:44 18 could figure out who these people were and why they were
01:45 19 involved.

01:45 20 Q. Did you -- what did the results of those
01:45 21 investigations, if anything, tell you?

01:45 22 A. Well, the -- they -- a lot of them had the
01:45 23 same addresses, previous addresses or current addresses.
01:45 24 They were all from the same area. Just they -- they
25 seem to be relatives because they -- we pulled one that

01:45 1 has a relative list so it looks like they might be
01:45 2 relatives. So there were a lot of questions I had after
01:45 3 I -- I pulled all these materials.

01:45 4 Q. And did you raise any of these questions with
01:45 5 miss -- with Joseph Ernst in your --

01:45 6 A. Yes, I did.

01:45 7 Q. And what -- can you just pick one and...

01:45 8 A. Well, I -- I asked him who Dorothy Valgenti
01:45 9 was, and he said that was his aunt. And I asked him who
01:45 10 Thomas Ernst was, and he said that was his father. And
01:45 11 then he explained that he wasn't speaking to his father
01:46 12 and went on to talk about past occurrences that -- that
01:46 13 his father was involved in.

01:46 14 Q. Okay. Let's just back, you know, on that --
01:46 15 just take one of each of those in turn.

01:46 16 Dorothy Valgenti, what did he say, if
01:46 17 anything, about Dorothy Valgenti?

01:46 18 A. Not much, except that that was his aunt. And
01:46 19 I think -- I can't recall whether he said she was living
01:46 20 on the property or not. I would have to look at my
01:46 21 notes.

01:46 22 Q. Did -- did you tell him that you learned the
01:46 23 property was currently titled in a Valgenti Trust?

01:46 24 A. Yes, I did.

25 Q. And what, if anything -- what was his reaction

01:47 1 A. I -- I couldn't remember whether he told me
01:47 2 that or I found that out on the person report. I really
01:47 3 can't recall.

01:47 4 Q. Okay. Did he -- did he mention -- or what, if
01:48 5 anything, did he -- did he tell you about his -- his
01:48 6 residence?

01:48 7 A. That he had only lived in this subject
01:48 8 property that we gave the loan on for three months, I
01:48 9 think, one summer when he -- or when he was in school
01:48 10 for just a short amount of time.

01:48 11 Q. Okay. Did he ever mention that he lived there
01:48 12 for between 2007 and 2009?

01:48 13 A. No.

01:48 14 Q. This is -- is this the only time you spoke to
01:48 15 him about living at the property?

01:48 16 A. I think it was.

01:48 17 Q. Okay. What -- tell me more about your first
01:48 18 conversation with him. You -- you discussed the results
01:48 19 of your investigation.

01:48 20 A. Um-hum.

01:48 21 Q. What else? Did he -- did he discuss his
01:48 22 father at all?

01:48 23 A. Yes. He went into some detail about his
01:48 24 father that he had -- he had a pattern of purchasing
25 properties in his children's names and that he did the

01:49 1 same thing and in I think it was Missouri and Indiana
01:49 2 when they were younger and...

01:49 3 Q. Did you -- did you attempt to follow up or
01:49 4 what -- what, if anything, did you do to --

01:49 5 A. I asked him to send me any documents that he
01:49 6 had concerning this, you know, to help his case to show
01:49 7 that, you know, there was a pattern of his father to do;
01:49 8 but I never received any.

01:49 9 Q. Did you ever -- did you -- how many times did
01:49 10 you -- did you follow up with him?

01:49 11 A. Gosh, at least three or four times.

01:49 12 Q. Okay. You testified earlier that you
01:49 13 contacted Mr. -- or the -- the notary, Pankaj Teli.

01:49 14 A. Um-hum.

01:49 15 Q. Do you know when you talked to him?

01:49 16 A. Before I wrote this report. Let's see.

01:49 17 Because I -- I -- I remember, you know, writing it in
01:50 18 the report that I had tried to -- that I had contacted
01:50 19 him.

01:50 20 Q. Like if you look at the last paragraph --

01:50 21 A. Yeah. It says on October 6th of 2009.

01:50 22 Q. So you spoke to the notary October 6th, 2009?

01:50 23 A. Um-hum.

01:50 24 Q. How soon was that or what -- when was that in
25 relation to when you got this referral from Claudette

01:57 1 restated what I -- the facts that I had already found
01:57 2 out.

01:58 3 Q. Okay. Paragraph -- let's see -- my apologies.
01:58 4 I'm trying to find my place. Paragraph 14 of Exhibit 1,
01:58 5 your declaration.

01:58 6 A. "I corresponded by e-mail with Mr. Ernst
01:58 7 on" --

01:58 8 Q. Um-hum. Okay. And can you read that last
01:58 9 sentence for me. Mr. Bennett also asked you about this.

01:58 10 A. "I reiterated" -- that?

01:58 11 Q. Yes.

01:58 12 A. I reiterated to you -- Mr. Ernst contacting
01:58 13 this -- that -- that this contacting the notary would be
01:58 14 the first step in attempting to prove -- to prove that
01:58 15 he did not sign the power of attorney.

01:58 16 Q. And Mr. Bennett wanted to know if those were
01:58 17 my words or your words.

01:59 18 A. Oh, that -- those were my words. I -- I -- I
01:59 19 put that in an e-mail to him.

01:59 20 Q. Can you look at the last sentence of Exhibit
01:59 21 4, please, and just read that for me.

01:59 22 A. It was reiterated that it would be the first
01:59 23 step in attempting to prove that he did not sign the
01:59 24 power of attorney.

25 Q. Okay. I just have a few more questions.

02:02 1 Q. How cooperative, if at all -- or how would you
02:02 2 describe your typical consumer complaint and the
02:02 3 behavior of the person making the complaint?

02:02 4 A. That if -- if they truly feel that the --
02:02 5 there's something in the file that -- that they did not
02:02 6 sign, they will -- they will do their part to help in
02:02 7 the investigation. There's only so much that -- that we
02:02 8 can do. We can -- you know, if they have any idea who
02:02 9 maybe did it or that, you know, try to contact people.
02:03 10 Like the lady that I was talking about contacted the
02:03 11 secretary of state. They went over the documents that
02:03 12 the notary had. There were a lot of things behind the
02:03 13 scenes that -- that she -- she cooperated with.

02:03 14 Q. Is that the only example of that?

02:03 15 A. No. I can't think of any right now, but we do
02:03 16 ask -- like I said, we do ask everybody to file a police
02:03 17 report because once you go to the police and you have
02:03 18 to -- you have to give details of what happened and how
02:03 19 you -- how you think it happened and who the people
02:03 20 involved were. And we're just a third party in that.
02:03 21 It's not up to us to -- to file a police report.

02:03 22 Q. I wanted to ask you -- I just have one more
02:03 23 question -- two more questions.

02:03 24 I think you answered yes -- and -- and
25 if -- if I'm wrong about this, then I'll withdraw this

02:03 1 question. But Mr. Bennett asked you, you had already
02:04 2 determined this was not a fraud by the time you
02:04 3 contacted the notary. And that would have been
02:04 4 October -- I don't have it in front of me -- October...

02:04 5 A. October 6th --

02:04 6 Q. Okay.

02:04 7 A. -- I spoke to the notary.

02:04 8 Q. Is that accurate? Had you already determined
02:04 9 that this -- this was --

02:04 10 A. Was not a fraud?

02:04 11 Q. Was not a fraud. I think that's what he said.
02:04 12 I might be wrong.

02:04 13 A. No. I had no determination of that. I mean,
02:04 14 there's always suspicions, but I had not determined one
02:04 15 way or the other when I spoke with the notary.

02:04 16 Q. Okay. And did your investigation that -- your
02:04 17 report, does that -- does that -- let me rephrase.
02:04 18 Strike that.

02:04 19 Would you characterize your report as --
02:05 20 no. Strike that.

02:05 21 Last question: You testified --
02:05 22 Mr. Bennett asked you some questions about the accent
02:05 23 of the notary.

02:05 24 A. Um-hum.

25 Q. Do you believe you understood what he was